

# "Our Father in Heaven": A Legal Analysis of the Recitation of the Lord's Prayer by Public School Coaches

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**Abstract:** The Establishment Clause of the First Amendment to the U.S. Constitution sets forth the separation of church and state required in public schools. That clause has been interpreted in a lengthy history of U.S. Supreme Court decisions. Nevertheless, accommodating one person's right of religious expression while not infringing on another person's right to be free from religious coercion in our nation's public schools continues to be a source of spirited debate. In this article, the authors summarize relevant decisions of the Supreme Court and extend the discussion to the Fifth Circuit Court of Appeals' decision in *Doe v. Duncanville Independent School District* in which a public school coach led team members in prayer prior to a school-sponsored athletic contest.

**Keywords:** coaches, establishment clause, First Amendment, prayer, public schools

The struggle to accommodate one person's right of religious expression while not infringing on another person's right to be free from religious coercion has existed since our Founding Fathers first drafted the Bill of Rights. In no arena has that battle raged more intensely than in our public schools. Incidents of daily prayer, scripture readings, moments for silent meditation, and invocations at extracurricular school activities and graduation ceremonies have been so troubling as to necessitate intervention by the U.S. Supreme Court on numerous occasions.

In the process of deciding those cases, the Supreme Court established legal precedents that should guide the policy decisions of every public school board member, administrator, and teacher in the United States. However,

this is not the case in many school districts. Many still hold baccalaureate services and permit invocations and benedictions at school-sponsored functions. Another widespread practice involves athletic coaches leading team members in a recitation of the Lord's Prayer before and after school-sponsored athletic contests.

## School-Endorsed Prayer

The First Amendment provides in part that, "Congress shall make no law respecting an establishment of religion" (U.S. Const. amend. I). Known as the establishment clause, that portion of the First Amendment was later made applicable to the states by the Fourteenth Amendment to the U.S. Constitution. Section one of the Fourteenth Amendment provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" (U.S. Const. amend. XIV, § 1). Read together, the establishment clause and the Fourteenth Amendment are interpreted to mean that states have no more right to make laws or policies that establish religion than does Congress. This principle of law is recognized by the U.S. Supreme Court in *Engel v. Vitale* (1962).

In *Engel*, the court decided the constitutionality of daily classroom prayer adopted by the agency charged with overseeing the operation of public schools in New York State. The uniform prayer was incorporated into a document titled "Statement on Moral and Spiritual Training in the Schools." The parents of ten students filed a lawsuit arguing that the statute established religion and therefore violated provisions of the First and Fourteenth Amendments.

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The court held that New York State had violated the establishment clause by using its public school system to encourage recitation of a prayer. Writing for the majority, Justice Hugo Black stated “[w]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of American people to recite as a part of a religious program carried on by government” (*Engel* ¶ HR1).

In a majority opinion that was based on principles later deemed by Justice Tom Clark in *School District of Abington Township v. Schempp* (1963) and *Murray v. Curlett* (1963) to be so universally recognized as to not require the citation of case law, the U.S. Supreme Court reviewed the history of the establishment clause in light of the experiences that caused the Founding Fathers to leave England and settle in America. In discussing the purposes of the establishment clause, Justice Black stated:

[i]ts first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its “unhallowed perversion” by a civil magistrate. (*Engel* ¶ HR4, HR5, and HR6)

The Supreme Court was again called on to construe the legality of state statutes establishing state-sponsored religion in the companion cases of *Abington* and *Murray*. In *Abington*, a Pennsylvania statute required that at least ten verses from the Holy Bible be read over the intercom by students, without comment, at the opening of each public school on each school day. That exercise was followed by a recitation of the Lord’s Prayer over the intercom and by students in each of the classrooms. Teachers gave students who did not wish to participate the option to leave the classroom or remain and not participate.

In *Murray*, a Maryland school district adopted a similar rule pursuant to a state statute. The rule provided that each school day would begin with a reading, without comment, of a chapter in the Holy Bible or a recitation of the Lord’s Prayer. The rule did permit students to be excused from participation on request of a parent. Some parents subsequently filed a lawsuit.

The Supreme Court decided *Abington* and *Murray* on several foundational interpretations of the Constitution. The court first acknowledged that the government

must at all times be neutral, protecting all religions but preferring none. The court further noted that the establishment clause was wholly applicable to the states by virtue of the Fourteenth Amendment. Furthermore, the court ruled that the establishment clause was not limited to prohibiting simply the governmental preference of one religion over another but was intended to effect a complete and permanent separation of the spheres of religion and government. As a result, the government did not have to directly compel an individual to participate in a religious exercise to be in violation of the establishment clause.

In both cases, the court held that those religious exercises were being carried out in direct violation of the establishment clause and of the Fourteenth Amendment. In reaching its decisions, the court relied on the facts that a state statute required the reading of verses from the Holy Bible or a recitation of the Lord’s Prayer at the beginning of each school day, the exercises were prescribed as part of the curriculum for students required by law to attend school, and the exercises were held in the school building under the supervision and with the participation of school employees. Consequently, in both cases the court found the practices to be unconstitutional because the government could not demonstrate that the legislation had a secular purpose and a primary effect that neither advanced nor inhibited religion.

The court further stated in *Abington* and *Murray* that allowing students to opt out of the exercises did not mitigate the fact that those exercises were unconstitutional. Moreover, the argument that the religious practices at issue were relatively minor encroachments did not persuade the court. Writing for the majority, Justice Clark stated “[t]he breach of neutrality that is today a trickling stream may all too soon become a raging torrent” (*Abington* and *Murray* ¶ HR13). In 1985, the U.S. Supreme Court considered an establishment clause case that, unlike the fact patterns found in *Engel*, *Abington*, and *Murray*, did not involve a state-sponsored daily prayer or scripture reading. To the contrary, in *Wallace v. Jaffree* (1985) the court was called to decide whether an Alabama statute that authorized a period of silence for meditation or voluntary prayer violated the establishment clause.

The Court in *Wallace* was confronted with legislation that was designed to return voluntary prayer to the public schools. Writing for the majority, Justice John Paul Stevens found “remarkable” (*Wallace* ¶ HR2) an Alabama district court judge’s conclusion that the establishment clause in no way barred the state of Alabama from establishing its own religion.

The *Wallace* court held that the Alabama statute violated the establishment clause based on the three-part test set forth in *Lemon v. Kurtzman* (1971). Under the *Lemon* test, to pass First Amendment muster a statute

must have a secular legislative purpose, a principal or primary effect that neither advances nor inhibits religion, and not foster an excessive governmental entanglement with religion. The Court found that the Alabama statute violated the purpose prong of the *Lemon* test because of the express legislative intent to bring prayer back into Alabama public schools. The Court ruled that the statute was enacted "for the sole purpose of expressing the State's endorsement of prayer activities" (*Lemon* ¶ HR1B).

The Supreme Court extended its analysis of establishment clause cases in 1992 to consider whether it was constitutionally permissible for a school to invite clergy to give the invocation and benediction at a public school graduation ceremony. In *Lee v. Weisman* (1992), the principal of a public school in Rhode Island invited a rabbi to deliver nonsectarian prayers at the school's graduation ceremony. A parent filed a motion for temporary injunctive relief, but the motion was denied and the graduation proceeded as planned with the complainants in attendance. The parent subsequently filed for permanent injunctive relief to bar prayers at future graduation ceremonies in the district.

In declaring the practice of inviting clergy to deliver prayers to be unconstitutional, the Supreme Court in *Lee* relied heavily on the fact that even those students who objected to the prayers were socially compelled to attend the ceremony. In effect, the school, as an agent of the state, endorsed and established a religious exercise and required nonbelieving students to accept these practices as a condition of attending graduation. The school's argument that students were not required to attend the graduation ceremony to receive a diploma did not persuade the court. The court termed the argument an exercise in formalism and characterized it as one that exacted too high a price for dissent. In so ruling, the court took special notice of the unique position of vulnerability occupied by students. The Supreme Court in *Lee* also rejected the argument that prayers at graduation were one indicium of a civic religion based on the existence of an ethic or a morality that transcended human invention, one to which all communities and societies could aspire. The court added that even if such a religion did exist, it was not the government's place to advance it.

### Student-Initiated Prayer

If prayers endorsed by the school are not permissible, does that same prohibition apply to student-led, student-initiated prayer? The Supreme Court addressed this question in *Santa Fe Independent School District v. Doe* (2000). Here, the court construed the constitutionality of a public school policy that permitted but did not require prayer to be initiated and led by students at high school football games.

The policy in question authorized two student elections. One election would decide if prayer would be offered whereas the other would determine which student would deliver the invocation. The policy further defined the school's intent to have an invocation that solemnized the event and that promoted good sportsmanship and fair play. The students chose by majority vote to have prayer at the games and also elected a person to lead the prayer.

Although the prayers were student led and initiated, the Supreme Court held in *Santa Fe* that the school district's policy violated the establishment clause. In announcing its ruling, the court referenced its statement in *Lee* that "[t]he principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause" (¶ HR4). Simply put, the government cannot justify the establishment of a religion on the grounds that such establishment is a byproduct of allowing the free exercise thereof.

The school's argument that it had effectively created a forum for student expression that did not carry the school's imprimatur did not impress the court. The Court rejected the argument that student elections ensured that only messages deemed appropriate under the school's policy would be delivered. Moreover, the Court recognized that the concept of a majority election, by its definition, effectively silenced dissent. In rejecting the school's assertion of lack of control, the Court further noted that the invocation was delivered on school property prior to a school-sponsored event, within visible presence of the school's name, logo, insignia, and colors and broadcast over school equipment. Within that context, the Court ruled that it was entirely reasonable for a member of the listening audience to conclude that the prayer had the school's stamp of approval.

Finally, the Court rejected the argument that there was no governmental coercion because attendance at football games was voluntary. The Court reasoned that attendance was mandated for some students, such as cheerleaders, band members, and football players, and perhaps required for credit. It was further recognized that football games were significant events in the cultural life of a school and therefore important even for those students whose attendance was not required. Under the *Santa Fe* ruling, the government cannot require students to choose between attending such events or risk experiencing a personally offensive religious experience. To do so is to, in effect, coerce the practice of religion.

### Coach-Led Prayer

The U.S. Supreme Court has not yet addressed the constitutionality of a coach leading his team in prayer before and after a game. The issue is nonetheless real in that both are common practices in public high schools

across America. Generally, coaches and players assume a kneeling position while the head coach leads players and assistant coaches in a recitation of prayer.

Although the Supreme Court has not considered this issue, the Fifth Circuit Court of Appeals has heard such a case. In *Doe v. Duncanville Independent School District* (1995), a Texas high school girls' basketball coach included the Lord's prayer in each basketball practice, in the locker room before games, after games in the center of the basketball court in front of spectators, and on the school bus traveling to and from basketball games. The head coach initiated or participated in the prayers, which had been a tradition at the school for almost twenty years.

The school district argued that it could not prevent its employees from participating in student prayers without violating their employees' rights to the free exercise of religion, to association, and to free speech and academic freedom. The appellate court rejected that argument based on the Supreme Court's majority opinion in *Lee*, wherein Justice Kennedy stated that, "[t]he principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause" (*Doe* ¶ HR7A).

In reaching its decision that the school's practices failed the *Lemon* test, the Fifth Circuit noted that the challenged prayers took place during school-controlled, curriculum-related activities that did not provide an open forum for student expression. Furthermore, school coaches and employees were present during the activities as representatives of the school and their actions were representative of school-district policies. The court ruled that such participation improperly entangled religion and signaled an unconstitutional endorsement by the school. The appellate court also supported its decision based on the fact that while membership on the basketball team was extracurricular, it was also directly related to the school's physical education classes. Players were required to attend and received academic credit for their participation.

Perhaps the most alarming and profoundly disturbing aspect of *Doe* was the treatment received by a student who did not wish to take part in the Lord's prayer. The student initially chose to partake rather than single herself out but later decided that she would not participate further. As a result, she was required to stand by while her teammates and coaches prayed. Moreover, as noted in the court's opinion, "Her non-participation drew attention from her fellow students, who asked her 'Aren't you a Christian?' and from one spectator, who called out 'Well, why isn't she praying? Isn't she a Christian?'" At one point during her history class, *Doe's* history teacher referred to her as a 'little atheist'" (*Doe* ¶ 1. Facts).

The verbal harassment suffered by the plaintiff in *Doe* reaches far beyond even the type of situation that

the Supreme Court contemplated in *Lee* when it noted that, "[t]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools. . . . The concern may not be limited to the context of schools, but it is most pronounced there" (¶ HR15). *Doe* exposes the danger that in matters of religion both students and adults are capable of applying extreme overt pressure to conform.

Based on *Engel* and its progeny of cases, including *Doe*, there is little room for debate on the constitutionality of a public school coach leading the team in prayer before or after games. It is clear that this practice is in violation of the establishment clause of the First Amendment. The individuals leading the prayer are engaged in activities, namely coaching, while under contract to the school. Participants are typically dressed in clothes purchased by the school that bear the school's colors, logo, and insignia. Prayers occur either on school property or at other venues in which coaches and students are present on a school-sponsored trip.

Furthermore, the exalted status of coaches should not be underestimated. In *Santa Fe*, the Supreme Court noted the reverence with which high school football is regarded in our country. Those deep-seated feelings of regard are often extended to coaches, who are uniquely situated to hold sway over impressionable players. A coach can inspire fear as well as respect and neither emotion is inclined to comfort a student contemplating a decision not to pray. Consequently, there is the potential that a much stronger personal relationship exists between coaches and players than was contemplated in any of the Supreme Court decisions to date that involved a violation of the establishment clause.

The guidelines set forth in the decisions of the U.S. Supreme Court beginning with *Engel* are not merely fodder for academic debate. It is essential that educational leaders become and remain knowledgeable about case law that impacts daily operation of schools and to use that knowledge to shape school policies. Educational leaders have a duty and responsibility to ensure that their school policies adhere to the law, both as an indication of good citizenship and as a matter of respecting and protecting the rights of all concerned to be free from the establishment of a religion by an agency of the government, no matter how slight.

Educational leaders must step to the forefront and endorse the values that underscore the provisions of the establishment clause of the First Amendment. The ominous warning James Madison sounded has proven to be accurate for our nation's dissenters. In his *Memorial and Remonstrance against Religious Assessments*, as cited in *Engel*, Madison (1785) said, "It is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may



establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" (para. 3).

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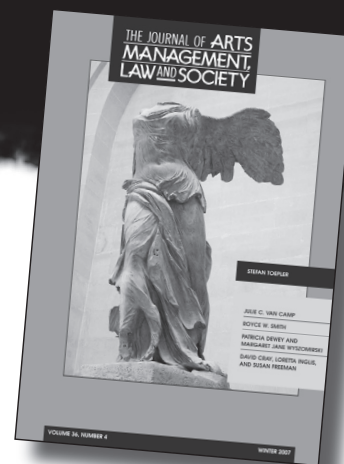
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